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TECHNICAL CHANGES ACT OF 1953

P.L. 157

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H. R. 6426

TO AMEND THE INTERNAL REVENUE CODE TO EXTEND THE TIME DURING WHICH CERTAIN PROVISIONS RELATING TO INCOME AND ESTATE TAXES SHALL APPLY, AND FOR OTHER PURPOSES

JULY 21, 1953.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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JULY 21, 1953.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. REED of New York, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H. R. 6426]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6426) to amend the Internal Revenue Code to extend the time during which certain provisions relating to income and estate taxes shall apply, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. GENERAL STATEMENT

H. R. 6426 contains 17 sections dealing with amendments to the Internal Revenue Code. Six of the sections extend the period during which certain provisions of the code will apply. The other 11 sections relate to amendments to the Internal Revenue Code providing for removal of inequities in income- and estate-tax cases. Your committee believes that it is important to take care of these inequities ahead of the general revision bill which will be considered next year.

II. EXPLANATION OF THE BILL

A. EXTENSION PROVISIONS

Section 101. Election as to recognition of gain in certain corporate liquidations

This section extends to 1953 the provisions of section 112 (b) (7) of the Internal Revenue Code dealing with the nonrecognition of gain in certain corporate liquidations. This provision which applied to certain liquidations in a single calendar month in 1951 was extended by the Revenue Act of 1951 to such liquidations in 1952 and is further extended by this bill to such liquidations occurring in a single calendar

month in 1953. Your committee believes that such an extension for 1 year is desirable to enable those who were unable to arrange for liquidation within the requisite period in 1951 or 1952 to have the benefits of this provision if they can complete such liquidations in a single calendar month in 1953.

Section 102. Extension of time for elections under Public Law 539 overruling Virginian Hotel case

In Public Law 539, approved July 14, 1952, Congress overruled the decision of the Supreme Court in the Virginian Hotel case. Under that decision a taxpayer who deducted depreciation for any year in excess of the amount allowable for such year was nevertheless required to reduce the basis of his property by the entire amount of depreciation allowed, even though he had received no tax benefit from claiming such excessive depreciation as a deduction. Under Public Law 539, the basis of the property was not required to be reduced by such excessive depreciation unless the taxpayer had received a tax benefit for taking a deduction for such excessive amount. The taxpayer was granted under the law an election (under such regulations as the Secretary prescribed) to apply this new treatment retroactively to the period since February 28, 1913, and before January 1, 1952, but no election could be made after December 31, 1952. The Treasury Regulations under the law were not promulgated until December 30, 1952. Thus taxpayers were not given sufficient time to determine whether such an election would be beneficial to them. Your committee therefore deems it desirable to extend through December 31, 1954, the time within which an election may be made. Since Public Law 539 provides that an election once made is irrevocable, the bill, in order to provide uniform treatment, permits taxpayers to revoke within the extended period elections made prior to January 1, 1953.

Section 103. Extension of time for making election with respect to war loss recoveries

Section 341 of the Revenue Act of 1951 sets forth a new method for treatment of war losses under section 127 of the Internal Revenue Code. It provides that at the election of the taxpayer (under such regulations as the Secretary may prescribe) the tax for the year in which the deduction for the war loss was taken is to be recomputed by reducing the deduction by the amount of the recovered property taken at its depreciated cost on the date of the loss or at its fair market value on the date of recovery, whichever is lower. The resulting increase in tax for the year of the loss, if any, is added to the tax for the year of recovery. The time for electing the benefit of this provision expired on December 31, 1952. Since the Treasury Regulations interpreting this section of the law were not promulgated until December 30, 1952, taxpayers did not have sufficient time to determine whether it was advantageous to make such an election. The bill extends the period for making such an election through December 31, 1953.

Section 104. Extension of period of abatement of income taxes of deceased members of Armed Forces

Section 154 of the Internal Revenue Code provides in the case of an individual who died after June 24, 1950, and prior to January 1, 1954, as a result of active service in a combat zone as a member of the

Armed Forces, an abatement of income tax liability which was outstanding at the date of his death. It also provides a forgiveness of the tax with respect to the taxable year in which falls the date of his death or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950. Your committee bill extends the period to which this section is applicable for one additional year so as to include the calendar year 1954.

Section 105. Extension of temporary provisions relating to life-insurance companies

The present temporary provisions for the taxation of life-insurance companies are extended for 1 year by this section of your committee's bill. Pending the results of studies being made by the staffs of the Treasury and the Joint Committee on Internal Revenue Taxation, your committee deems it advisable to continue for 1 year the provisions of present law.

Section 106. Extension of period for exemption from additional estate tax of deceased members of Armed Forces

Section 939 (b) of the Internal Revenue Code exempts from the additional estate tax estates of decedents dying after June 24, 1950, and before January 1, 1954, while in active service as members of the Armed Forces of the United States, where such decedents were killed in action while serving in a combat zone or died from wounds, disease, or injury incurred while so serving in line of duty and by reason of a hazard to which they were subjected as an incident of such service. Your committee's bill extends the application of this section to January 1, 1955.

B. Miscellaneous

Section 201. Venue of action for violation of State cigarette tax laws

The act of October 19, 1949, provided that persons, other than distributors, who sell or dispose of cigarettes in interstate commerce must forward to the tobacco tax administrators of States to which shipments are made monthly reports setting forth the names and addresses of the persons to whom shipments are made and the brand and quantity of cigarettes so shipped. Some courts have held that under the statute violations of the act are committed at the place from which the cigarettes are shipped, since the act only requires the shippers to forward their reports. The bill requires the actual filing of the reports with the State tobacco administrator. This would have the effect of assuring, in the event of an offense committed under the act, that the venue of the action would be in the district in which the State tobacco administrator has his office.

Section 202. Deduction of certain unpaid expenses and interest

In the case of certain closely related taxpayers, such as a corporation and a shareholder owning more than 50 percent of the corporation's stock, section 24 (c) of the code operates to disallow deduction of certain expenses and interest if the following conditions are met:

(1) The amount is not paid within the taxable year or within 2½ months after the close thereof; and

(2) Under the recipient's method of accounting the amount is not, unless paid, includible in his income in the taxable year in which, or with which, the taxable year of the payor corporation ends.

This provision is intended to insure that transactions between such related taxpayers do not operate to shift items of income or deductions. A situation has been called to the attention of your committee, however, where section 24 (c) may work an undue hardship. For example, a recipient on the cash basis may have an amount credited to his account and made available to him by the corporate payor within 2½ months after the close of the payor's taxable year so that the recipient must include it in income as an item constructively received in the taxable year so credited. If, however, the corporate taxpayer fails actually to pay over such amount within the period of 2½ months, the item will not be allowed to the corporation as a deduction. Your committee believes that such a case should not fall within the ban of section 24 (c) and the bill so provides by an appropriate amendment of requirement (1) above.

The amendment is applicable to taxable years of the payor beginning after December 31, 1950, but under certain conditions, set forth to insure that payments will be properly accounted for taxwise with respect to both parties, the payor may elect to make this amendment applicable to taxable years beginning after December 31, 1945, and before January 1, 1951.

Section 203. Income-tax basis of property transferred in trust

Section 113 (a) (5) of existing law contains a provision to the effect that where the grantor retains the income from property in trust for his life with power to revoke the trust, the basis of the property in the hands of the persons entitled to take the property under the terms of the trust instrument after the grantor's death shall, after such death, be the same as if the property had passed under a will executed on the day of the grantor's death. This results in the basis of the property in the hands of the recipients being its fair market value at the date of the grantor's death or, at the election of the executor, the value 1 year from the date of death. Your committee believes that this same rule should apply to situations where the grantor with a reserved life estate has the power to make any change in the enjoyment of the corpus of the trust through the power to alter, amend, or terminate the trust. In both cases, the trust property is required to be included in the gross estate of the grantor for estate-tax purposes. The amendment applies only to grantors dying after December 31, 1951, and only with respect to taxable years ending after December 31, 1951.

Section 204. Earned income from sources without the United States

Your committee deems it advisable to repeal section 116 (a) (2) of the Internal Revenue Code, effective as to amounts received after April 14, 1953. Section 116 (a) (2) excludes from income in the case of a citizen of the United States income earned abroad if such citizen was present in a foreign country or countries for a period of 17 out of 18 consecutive months. While this paragraph was designed to encourage men with technical knowledge to go abroad in order to complete specific projects, it has been subject to a great deal of abuse. Some individuals with large earnings have seized upon the provision as an inducement to go abroad to perform services, which were customarily performed at home, for the primary purpose of avoiding the Federal income taxes. It has also been ascertained that in many cases Americans taking advantage of this provision do not pay any income tax even to the foreign country or countries in which the

income is earned. This is because they are not in any particular foreign country long enough to establish a residence or because the foreign country in question does not impose any income tax. It is believed that the repeal should not be effective until April 15, 1953, so that taxpayers who went abroad will not be subject to a tax on their earnings received prior to notice that this provision would be eliminated. However, taxpayers were put on notice as to the possible repeal of section 116 (a) (2) by the introduction of a repeal bill on April 14, 1953, by the chairman of the committee and by the publication of correspondence with the Secretary of the Treasury, which was published in the Congressional Record of that date, in which the Secretary of the Treasury expressed concern over the manner in which this paragraph was being utilized for tax-avoidance purposes and expressed the hope that legislative treatment would be given to this problem to prevent such abuses. The bill will not affect the liability of any employer to deduct and withhold the tax on such earnings in the case of remuneration paid before the first day of the first month beginning more than 10 days after the date of the enactment of this act.

Section 205. Net operating loss deductions

Your committee has included provisions designed to eliminate disparities in the treatment of taxpayers in respect to the taxable years to which a net operating loss may be carried forward. Under these provisions the number of years to which a net operating loss may be carried forward by certain corporations reporting income on the basis of a fiscal year has been extended. Under the cutoff dates in existing law these corporations are limited in the use of their net operating losses. For example, under existing law, if a corporation has a taxable year beginning on December 1, 1947, a net operating loss developed in that year may only be carried forward to the 2 succeeding taxable years whereas if the taxable year had begun on January 1, 1948, such may be available to offset gains of the 3 succeeding taxable years.

Your committee has provided that in the case of a corporation, other than a corporation which commenced business after December 31, 1945, which has a net operating loss for a taxable year beginning in 1947 and ending in 1948 (so that the taxable year overlaps the critical dates) such a corporation may utilize such loss in the third succeeding taxable year. The amount of such carryover to the third year cannot exceed an amount which bears the same ratio to the net operating loss as the number of days in the loss year falling after December 31, 1947, is of the total number of days in the loss year.

In the case of a corporation the first taxable year of which began in 1949 and ended in 1950, a comparable extension is provided. Such corporations are put on a basis similar to that provided for corporations with net operating losses for taxable years beginning after 1949, that is, the net operating loss may be available for the 5 succeeding taxable years. However, your committee's amendment subjects the amount of the carryover to the fourth and fifth succeeding taxable years to a general limitation to such part of the net operating loss as is properly allocable to 1950.

Your committee has also added a provision amending section 1 of the act of July 15, 1947 (61 Stat. 324). This act allowed a carryforward of the net operating loss of a predecessor railroad corporation

to a successor railroad corporation. Since the reorganization may have caused a short taxable year of the predecessor and of the successor to fall within one 12-month period, such corporations would, in effect, be denied the full 2-year carryforward available to other corporations, the act allowed a carryover for 3 taxable years in such cases. Section 330 (b) of the Revenue Act of 1951 added section 122 (b) (2) (C) to the code which provided, in the case of all corporations, for a 3-year carryforward of a net operating loss incurred for any taxable year beginning after December 31, 1947, and before January 1, 1950. Accordingly your committee's amendment would allow a successor railroad corporation a 4-year carryover in order to continue the prior treatment under the act of July 15, 1947.

Section 206. Amortization deduction for grain-storage facilities

A critical shortage of facilities for storing grain has developed throughout the Nation during the past several years. This shortage has been felt particularly by producers of such grains as wheat and corn. In view of the situation which has arisen, your committee has felt impelled to provide an inducement for taxpayers to construct new grain-storage facilities, to increase the capacity of those already in existence, or to adapt existing construction to the storage of grain.

Under existing law, a taxpayer undertaking such expenditures would be allowed to recover his costs only through a deduction for depreciation taken over the period of the useful life of such new construction or adaptation. Your committee has added section 124B to the code to allow such costs in the case of construction or adaptation after December 31, 1952, and before January 1, 1957, to be deducted, at the taxpayer's election, over the period of 60 months beginning either with the month following the month in which the facility was completed, or with the succeeding taxable year. In the event that the shortage of facilities for storing grain remains in a critical state through 1956, your committee would consider it appropriate to extend the date within which a taxpayer may construct such facilities and receive the benefits of this provision. The deduction is available only with respect to taxable years ending after the date of the enactment of this act. In the case of new construction the deduction is only available with respect to so much of the cost as is attributable to construction after December 31, 1952, and in the case of the alteration or adaptation of existing buildings only such cost as is properly attributable thereto after such date may be so deducted.

This amortization deduction is in lieu of that allowed for depreciation, but a taxpayer is allowed to deduct ordinary depreciation for that part of his costs of construction which would not qualify under this section, for example, by reason of not having been incurred subsequent to December 31, 1952. A taxpayer may elect to discontinue his amortization deductions under this section as of the beginning of any month specified in a notice filed with the Secretary before the beginning of such month and may thereafter be allowed the depreciation deduction. In the case of property held by one person for life with remainder to another, the life tenant is allowed the deduction under this section as if he were the absolute owner. Special rules are provided to allow the benefits of this deduction to a person acquiring a grain-storage facility to which this section is applicable. These rules are discussed in the technical part of this report relating to this provision.

This special amortization deduction is available to a farmer constructing a grain-storage facility. The statute defines a grain-storage facility as a corncrib, grain bin, or grain elevator, or any similar structure primarily suited for the storage of grain, which is intended by the taxpayer at the time of his election to be used for the storage of grain produced by him. The deduction is also available to any person who constructs any public grain warehouse permanently equipped for handling grain. Under the definition of a grain-storage facility the special amortization deduction is not allowed to persons who store only grain purchased for consumption in their business. For example, persons engaged in the milling of flour who construct storage facilities for purchased grain used in such processing would not be allowed to deduct the cost of any facilities under this provision.

Section 207. Exclusion of certain transfers taking effect at death

Your committee has amended the estate-tax provisions of the code relating to certain transfers of property with retention of the income for life by the transferor. In 1930 the Supreme Court held that property so transferred should not be included in the taxable estate of the transferor. *May* v. *Heiner* (281 U. S. 238). In response to this and related decisions, on March 3, 1931, Congress adopted a joint resolution providing that such transfers were includible (46 Stat. 1516), and the Revenue Act of 1932 substantially reenacted the provisions of this joint resolution. The joint resolution was interpreted in 1938 as being only prospective in its operation so as not to apply the transfers made prior to the date of its adoption. *Hassett* v. *Welch* (303 U. S. 303).

In the face of what had long been regarded as the settled interpretation of the then existing estate-tax provisions relating to these pre-1931 transfers with retention of a life estate by the transferor, the Supreme Court in 1949 in effect overruled its two earlier decisions and held that a transfer of property in 1924, with income retained for life by the transferor, required that the transferred property be included in the taxable estate of the transferor who died in 1939. *Commissioner* v. *Church* (335 U. S. 632).

Following the Church decision the Technical Changes Act of 1949 (as amended) provided that, in the case of life estates retained in transfers made on or before March 3, 1931 (and in some cases before June 7, 1932), the property would not be included in the decedent's gross estate solely by reason of retention of the life estate if the decedent died after the enactment of the code on February 10, 1939, and prior to January 1, 1951. As that act was passed by the Senate, it contained provisions which would have restored the estate-tax law to what it was prior to the Church opinion, that is, pre-1931 transfers would not be included in the gross estate of the decedent merely by reason of the retention of a life estate, regardless of when the decedent died. This provision was limited in conference, however, in the manner described above.

Your committee now agrees that the effect of the Church decision should be eliminated in all cases to which it was applicable. Prior legislation has already restored the estate-tax law to what it was before the Church decision in respect to all decedents dying after the enactment of the code and prior to January 1, 1951. Your committee's provision accomplishes this same result in respect of decedents dying on or after January 1, 1951.

Your committee has also provided relief for certain decedents where the death occurred prior to February 11, 1939, and whose estates were burdened with estate tax by reason of transfers made before March 4, 1931, involving the retention of a life estate, the reservation of a minute reversionary interest, or both. Since property transferred in this manner would not be included in the gross estate if the decedent died after February 10, 1939 (and before 1951), your committee's amendment would achieve a similar exemption for estates of decedents dying prior thereto. However, your committee has not felt it necessary to open the statute of limitations to any great extent in cases of decedents dying prior to February 11, 1939. It is only in cases in litigation at the time of the Church decision where there would appear to be any undue hardship. In these cases a refund or credit resulting from this provision will be allowed if a claim is filed within 1 year from the date of enactment of this act.

Section 208. Failure to relinquish a power in certain disability cases

Grantors of discretionary trusts created prior to January 1, 1939, who had retained certain powers which would result in the inclusion of the trust property in their gross estate for estate tax purposes were, under section 1000 (c) of the code, permitted to relinquish such powers on or after January 1, 1940, and on or before December 31, 1947, free of gift tax. Your committee believes that grantors who were unable to relinquish their discretionary powers within the above period because of a mental disability should not be penalized. It is therefore provided that there shall not be included in a decedent's estate property previously transferred in trust as to which he retained certain discretionary powers if such decedent for at least 3 months prior to December 31, 1947, and continuing to the date of his death was under a mental disability such that he could not have relinquished such powers free of gift tax pursuant to section 1000 (c). The term "mental disability" is intended to encompass those cases in which the decedent during the requisite period prior to his death was, in fact, incapable because of his mental condition of relinquishing the power, whether or not he was legally declared mentally incompetent during all or any part of such period.

Section 209. Reversionary interests in case of life insurance

Section 404 (c) of the Revenue Act of 1942 (as amended by sec. 503 (a) of the Revenue Act of 1950) provided in the case of decedents dying after the date of its enactment (October 21, 1942) that the proceeds of life insurance policies should not be included in the decedent's estate by reason of premiums paid by the decedent prior to January 10, 1941, if the decedent at no time after that date retained an incident of ownership in such policy. In determining whether the decedent had such an "incident of ownership" after January 10, 1941, there was to be taken into account only those reversionary interests exceeding 5 percent of the value of the policy and arising other than by operation of law. Your committee believes that similar treatment should be extended in the case of decedents dying after January 10, 1941, and before October 22, 1942. Such decedents will be deemed to have an incident of ownership in insurance policies by reason of a reversionary interest held after January 10, 1941, only if such reversionary interest exceeded 5 percent of the value of the

policy and arose by the express terms of the policy or other instrument and not by operation of law.

Section 210. Marital deduction in certain cases where decedent died before April 3, 1948

The provisions of this section relate to the marital deduction for estate-tax purposes. The attention of your committee has been called to certain situations where a decedent died after December 31, 1947, but prior to the date of the enactment of the Revenue Act of 1948, which allowed a marital deduction for estate-tax purposes. Consequently, while the act applied to such cases, estates of decedents dying within this short period from January 1, 1948, to the date of its enactment on April 2, 1948, were unable to secure the benefit of its provisions in some cases because the will of the decedent was not in accord with certain technical requirements of the act. If the decedent had been alive after the enactment of the Revenue Act of 1948, his will would undoubtedly have been rewritten to conform to the provisions of the act. Thus, under the act, property subject to a power of appointment in order to be taken into account for purposes of the marital deduction must meet the requirements of section 812 (e) (1) (F) of the Internal Revenue Code. This section requires the interest in property passing from the decedent under a power of appointment to be in trust and the power to be unlimited and exercisable by the surviving spouse at all events. Cases have been called to the attention of your committee where the power granted to the surviving spouse was not in trust and was confined to a power in the surviving spouse to use and consume such portion of the property as the surviving spouse may need or desire for her (or his) comfortable support or maintenance. It is the opinion of your committee that in the case of a decedent dying after December 31, 1947, and prior to April 3, 1948, a power of this broad application should be considered as sufficient to permit the marital deduction of property subject to such power and the bill so provides. The section is only applicable if the surviving spouse files with the Secretary of the Treasury within 1 year after the date of the enactment of this act an election to take the benefits of the section. If such an election is made the property subject to such power shall be considered as property as to which the surviving spouse had a general power of appointment created on the date of the decedent's death, exercisable by deed or by will. Thus a reliquishment of such power by the surviving spouse during her lifetime will result in a taxable gift and if such power is not relinquished during the lifetime of the surviving spouse, the property subject to such power will be considered as part of the estate of such surviving spouse for estate-tax purposes.

Section 211. Mitigation of effect of statute of limitations

Section 3801 of the code allows either the taxpayer or the Commissioner to correct an improper tax result in certain cases where such action would otherwise be prevented by the running of the statute of limitations. This is possible by reason of the allowance under that section of an additional period of time beyond the period of limitations which would ordinarily be applicable. One of the principles of the present statute is to preclude any adjustment unless the hardship results from the maintenance of an inconsistent position by either the taxpayer or the Commissioner.

The statute operates effectively in cases to which it is directed, but your committee realizes that tax inequities, the correction of which is prevented by the running of the period of limitations, may exist without regard to whether or not the position maintained by either party is inconsistent. A taxpayer may be disallowed a deduction or credit to which he is entitled in another taxable year or to which a related taxpayer may be entitled. Similarly, the Commissioner may have included an item in income for a taxable year different from the year for which such item should have been included, or the Commissioner may have included the item in the income of a related taxpayer.

Under present law, the errors described may not be corrected if discovered after the expiration of the period of limitation in respect to the correct year of the taxpayer or of the proper taxpayer. Your committee's bill includes provisions amending section 3801 in order to open the statute of limitations in such cases. Where a taxpayer claims a deduction or credit for a taxable year which is later determined to be the incorrect taxable year, or which is determined properly to belong to a related taxpayer, the amendment would permit a proper adjustment. However, the taxpayer is entitled to the benefits of this provision only if a credit or refund of the overpayment attributable to the deduction or credit for the correct year or to the related taxpayer was not barred at the time the taxpayer formally asserted that he should have received such credit or refund in the year disallowed.

Similarly, the Commissioner would be allowed to make assessment of tax with respect to the proper taxable year, if at the time he formally asserted that an item was includible in income for a taxable year, later determined to be the incorrect year, he could have made a proper assessment of tax for the correct year. An opportunity to make a proper assessment would also be extended to the Commissioner under similar circumstances in the case of the related taxpayer.

The amendments added by your committee are applicable only where the determination relating to the disallowance of the deduction or credit, or the exclusion of the item from gross income, as the case may be, became final after June 30, 1952.

III. DETAILED DISCUSSION OF THE TECHNICAL PROVISIONS OF THE BILL

TITLE I—EXTENSION PROVISIONS

SECTION 101. ELECTION AS TO RECOGNITION OF GAIN IN CERTAIN CORPORATE LIQUIDATIONS

This section amends section 112 (b) (7) of the code (relating to election as to recognition of gain in certain corporate liquidations), which section is applicable under existing law only in cases in which the liquidation was pursuant to a plan adopted after December 31, 1950, and the transfer of all the property under the liquidation occurred within 1 calendar month in 1951 or 1952. The amendment made by this section extends section 112 (b) (7) for an additional year and makes it applicable to cases in which the liquidation is pursuant to a plan adopted after December 31, 1950, and the transfer of all the property under the liquidation occurs within 1 calendar month in 1951, 1952, or 1953. The effect of the section is, in general, to postpone the

recognition of that portion of a qualified electing shareholder's gain on the liquidation which would otherwise be recognized and which is attributable to appreciation in the value of certain corporate assets unrealized by the corporation at the time such assets are distributed in complete liquidation.

Since the only amendment made by your committee to section 112 (b) (7) is the insertion of the date 1953 after the dates 1951 and 1952 where they now appear in subparagraph (A) (ii), the date August 15, 1950, is still applicable in subparagraphs (B), (E), and (F) of that section (relating to the definition of excluded corporations and relating to the recognition of gain to the shareholders from the receipt of money or of stock or securities acquired by the liquidating corporation after such date).

The amendment made by this section is applicable to taxable years ending after December 31, 1952.

SECTION 102. EXTENSION OF TIME TO MAKE ELECTION IN RESPECT OF EXCESSIVE DEPRECIATION ALLOWED FOR PERIODS BEFORE 1952

This section amends section 113 (d) of the code so as to extend through December 31, 1954, the period within which a person may make the election provided in section 113 (d). This section also permits an election made on or before December 31, 1952, to be revoked on or before December 31, 1954.

Any election made after December 31, 1952, under section 113 (d), as amended by this section, will be irrevocable on the date made and shall be made in such manner as the Secretary may by regulations prescribe. If an election made on or before December 31, 1952, is revoked after such date, no new election may be made.

Neither an election nor a revocation of an election by the transferor, donor, or grantor, shall affect the basis of property in the hands of the transferee, donee, or grantee if such election or revocation was made after the date of the transfer, gift or grant of such property.

The election under section 113 (d), as amended by this section shall apply in respect of all property held by the person making the election at any time on or before December 31, 1952.

SECTION 103. EXTENSION OF TIME FOR MAKING ELECTION WITH RESPECT TO WAR LOSS RECOVERIES

This section amends section 127 (c) (5) of the code (relating to elections with respect to war losses) to extend from December 31, 1952, to December 31, 1953, the period during which a taxpayer may make an election to have the provisions of section 127 (c) (3) apply to war loss property which was recovered during a taxable year ending on or before October 20, 1951. No change is made with respect to elections relating to such property recovered during taxable years ending after October 20, 1951.

SECTION 104. EXTENSION OF PERIOD OF ABATEMENT OF INCOME TAXES OF MEMBERS OF ARMED FORCES UPON DEATH

This section amends section 154 of the Internal Revenue Code to continue for an additional year the abatement of income tax provided for members of the Armed Forces who die as the result of service in a combat zone.

Section 154 of the code now provides that in the case of an individual who dies after June 24, 1950, and prior to January 1, 1954, while in active service as a member of the Armed Forces of the United States, if such death occurred while serving in a combat zone (as determined under sec. 22 (b) (13) of the code) or as a result of wounds, disease, or injury incurred while so serving, (1) the income tax imposed by chapter 1 of the code shall not apply with respect to the taxable year in which he dies or with respect to any prior taxable year ending on or after the first day he so served in a combat zone after June 24, 1950, and (2) the income tax imposed by chapter 1 of the code and under the corresponding title of each prior revenue law for taxable years preceding his years of service in a combat zone which is unpaid at the date of his death shall be forgiven. This section merely continues this provision until January 1, 1955.

SECTION 105. EXTENSION OF TEMPORARY PROVISIONS RELATING TO LIFE-INSURANCE COMPANIES

This section would amend sections 201, 203A, and 433 of the Internal Revenue Code to provide that the method of taxing life-insurance companies used in 1951 and 1952 shall be extended 1 more year to apply with respect to taxable years beginning in 1953.

The amendment to section 201 continues for taxable years beginning in 1953 the flat-rate tax of 3¾ percent on the first $200,000 and 6½ percent on amounts in excess of $200,000 of adjusted normal-tax net income (as defined in sec. 203A). The injunction in section 201 (f) against construing sections 201, 202, 203, and 203A so as to permit a double deduction for the same items is continued for taxable years beginning after December 31, 1952.

The amendment to section 203A applies the definition of adjusted normal tax net income contained therein to taxable years beginning in 1953.

The amendment to section 433 (a) (1) (II) extends to 1953 taxable years the 87-percent reserve interest credit used in 1951 and 1952 in arriving at the normal tax net income of life-insurance companies for purposes of computing excess-profits net income.

SECTION 106. EXTENSION OF PERIOD FOR EXEMPTION FROM ADDITIONAL ESTATE TAX OF MEMBERS OF ARMED FORCES UPON DEATH

This section amends section 939 (b) of the Internal Revenue Code to continue for an additional year the existing exemption from the additional estate tax provided for members of the Armed Forces who die as the result of service in a combat zone.

Section 939 (b) of existing law provides that the tax imposed by section 935 (the additional estate tax) shall not apply to the transfer of the net estate of a citizen or resident of the United States dying after June 24, 1950, and before January 1, 1954, while in active service as a member of the Armed Forces of the United States, if such decedent (1) was killed in action while serving in a combat zone, as determined under section 22 (b) (13) or (2) died at any place as a result of wounds, disease or injury suffered, while serving in a combat zone (as determined under sec. 22 (b) (13)) and while in line of duty,

by reason of a hazard to which he was subjected as an incident of such service. This section merely continues the exemption until January 1, 1955.

TITLE II—MISCELLANEOUS

SECTION 201. VENUE OF ACTIONS FOR VIOLATIONS OF ACT OF OCTOBER 19, 1949

This section would amend section 2 of the act entitled "An act to assist States in collecting sales and use taxes on cigarettes," approved October 19, 1949.

Section 2 of that act provides that any person selling or disposing of cigarettes in interstate commerce whereby such cigarettes are shipped to other than a distributor licensed by or located in a State taxing the sale or use of cigarettes shall, not later than the 10th day of each month, forward to the tobacco-tax administrator of the State into which the shipment is made, a memorandum or a copy of the invoice covering each shipment made during the previous month into such State. The amendment made by subsection (a) of this section would require that the memorandum or copy of invoice be filed with, rather than forwarded to, the tobacco-tax administrator, so that actions for violations of the act may be brought in the judicial district where the tobacco-tax administrator of the State involved is located.

Subsection (b) of this section provides that the amendment shall apply only in respect of memorandums or copies of invoices covering shipments made during the calendar month in which this act is enacted and subsequent calendar months.

SECTION 202. DEDUCTION OF CERTAIN UNPAID EXPENSES AND INTEREST

Under the present provisions of section 24 (c) of the code no deduction is allowed for interest or expenses (1) if not paid within the taxable year or within 2½ months after the close thereof; and (2) if, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and (3) if, at the close of the taxable year of the taxpayer or at any time within 2½ months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under section 24 (b) of the code. In general, section 24 (c) has been interpreted as requiring actual payment (cash or negotiable paper having a determinable market value) of the expense or interest not later than 2½ months after the close of the taxable year. This construction has resulted in the denial of deductions to taxpayers in some cases even though by application of the doctrine of constructive receipt the amount for which the deduction is claimed is required to be included in the gross income of the payee during the 2½ months after the close of the payor's taxable year.

Section 202 of this bill amends section 24 (c) (1) of the code to prevent the disallowance of a deduction for interest or expenses if the amount thereof is includible in the gross income of the payee within the taxable year of the payor or within the 2½ months following the close of such taxable year.

Paragraph (b) (1) of section 202 of this bill provides that subsection (a) shall be applicable to taxable years of the payor beginning after December 31, 1950.

Paragraph (b) (2) provides that, if the taxpayer (payor) so elects within 1 year after the date of the enactment of this act, subsection (a) shall also apply to such taxable years of the taxpayer which began after December 31, 1945, and before January 1, 1951, as are specified in the election. This election for any taxable year will not be valid unless at or before the time of filing such election, (A) the payee has included the amount deductible by the taxpayer in gross income for the taxable year in which it was includible, (B) the payee files a written consent to the assessment and collection of any deficiency and interest attributable to the noninclusion of such amount in gross income for such taxable year, or (C) the taxpayer pays an amount equal to the deficiency and interest which would be assessed if the payee had filed such consent.

The period of limitations provided in sections 275 and 276 of the code on the making of an assessment and the beginning of distraint or a proceeding in court for collection shall, with respect to any deficiency and interest thereon resulting from the filing of the consent required in (B) above, include 1 year following the date such consent was filed if such period of limitations otherwise would expire before the end of such 1-year period. The assessment and collection may be made notwithstanding any provision of law or any rule of law which otherwise would prevent such assessment and collection.

If an election by a taxpayer is filed for a taxable year for which the allowance of a credit or refund of an overpayment is barred, at the time of filing the election, by any law or rule of law, then any consent filed by the payee pursuant to this subsection with respect to such year shall be void.

If the payee is required to include in gross income pursuant to his consent an amount which was erroneously included in his gross income for another taxable year and, on the date the consent is filed, proper adjustment for the other taxable year is prevented by a provision of the internal revenue laws other than section 3761 (relating to compromises), then the error shall be corrected in accordance with the provisions of section 3801 of the code as if such consent were a determination under section 3801 of the code in which there is adopted a position maintained by the Secretary of the Treasury.

SECTION 203. BASIS OF CERTAIN PROPERTY TRANSFERRED IN TRUST

Subsection (a) of section 203 of the bill amends section 113 (a) (5) of the code, relating to the basis of property transmitted at death, to extend the application of that section to property acquired under the terms of certain types of trust instruments.

If property is transferred in trust to pay the income for life to, or upon the order or direction of, the grantor with the right reserved to the grantor at all times prior to his death to revoke the trust, section 113 (a) (5) of existing law provides that the basis of such property in the hands of persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as though the trust instrument had been a will executed by

the grantor on the date of his death. This section of the bill would provide the same rule in cases where the grantor (in addition to reserving rights in the income) under the terms of the trust instrument had reserved the right at all times prior to his death to make a change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust. This amendment, like the provisions of existing law, is intended to apply only to property which forms a part of the corpus of the trust at the time of the grantor's death.

Subsection (b) of section 203 of the bill provides that the amendment made by subsection (a) shall apply only in the case of property transferred by grantors dying after December 31, 1951, and only with respect to taxable years ending after December 31, 1951.

SECTION 204. EARNED INCOME FROM SOURCES WITHOUT THE UNITED STATES

Under present section 116 (a) (2) a citizen of the United States may exclude from gross income all amounts received from sources without the United States which constitute earned income (as specifically defined) attributable to any period of 18 consecutive months during which the taxpayer is physically present in a foreign country or countries for a total of at least 510 full days. Amounts paid by the United States or any agency thereof do not come within the exclusion.

This section limits the exclusion from gross income provided by section 116 (a) (2) of the code to amounts received or accrued, depending upon the taxpayer's method of accounting, on or before April 14, 1953, provided such amounts otherwise meet the requirements of section 116 (a) (2). Amounts received or accrued, depending upon the taxpayer's method of accounting, after April 14, 1953, may not be excluded under section 116 (a) (2).

The amendment has no effect on the running of the 18-month period during which a taxpayer may qualify with respect to the exclusion of income received on or before April 14, 1953. Thus, a part of the 18-month qualifying period may occur after April 14, 1953.

The amendment made by this section provides with regard to an amount received after April 14, 1953, in the case of a taxpayer entitled to the benefits of section 107, that the computations under section 107 shall be made without regard to the exclusion provided by section 116 (a) (2).

Subsection (b) amends section 1621 (a) (8) (A) of the code to provide that there will be no withholding on remuneration paid to an employee if it is reasonable to believe that such remuneration will be excluded from gross income under section 116 (a) of the code. Under present law, withholding is required with regard to remuneration for services which may be excluded from gross income under section 116 (a) (1) or (2) in cases where the remuneration is for services performed outside the United States but not within a foreign country, for example, remuneration for services performed on the high seas.

Subsection (c) provides that the amendment to section 1621 (a) (8) (A) shall not affect the liability of any employer to deduct and withhold tax imposed by section 1622 in the case of any remuneration paid before the first day of the first month beginning more than 10 days after the date of enactment.

SECTION 205. NET OPERATING LOSS CARRYOVERS

(*a*) *Amendment of section 122 (b) (2)*

Section 122 (b) (2) of the Internal Revenue Code provides, in general, that a net operating loss sustained in a taxable year beginning prior to January 1, 1948 (to the extent that it is not absorbed as a carryback), can be carried over to the 2 succeeding taxable years, and similarly that a net operating loss sustained in a taxable year beginning after December 31, 1947, and before January 1, 1950, can be carried over to the 3 succeeding taxable years. Subsection (a) of section 205 would amend section 122 (b) (2) of the code to provide that a corporation which has a net operating loss for a taxable year beginning in 1947 and ending in 1948 may likewise carry such loss forward to the 3 succeeding taxable years. The carryover to the third succeeding taxable year, however, shall not exceed that amount of the net operating loss which bears the same ratio to the loss as the number of days in the taxable year after December 31, 1947, bears to the total number of days in the taxable year. The amendment in effect would thus allow that portion of the loss attributable to 1948 to be carried over for 3 taxable years to the extent that it has not been absorbed by the income of prior and intervening years. The amendment has no application to a corporation which commenced business after December 31, 1945, since such a corporation, under the present provisions of section 122 (b) (2) (D), may carry a net operating loss sustained in a taxable year beginning after December 31, 1946, and before January 1, 1948, forward to the 3 succeeding taxable years.

Section 122 (b) (2) (B) of the code provides that a net operating loss sustained in a taxable year beginning after December 31, 1949, may be carried over to the five succeeding taxable years. Subsection (a) of section 205 would also amend section 122 (b) (2) to provide that if the first taxable year of the corporation began in 1949 and ended in 1950 and if it sustained a net operating loss in that taxable year, so much of the net operating loss as is allocable to 1950 may be carried forward to the fourth and fifth succeeding taxable years. The amount of the net operating loss which is allocable to 1950 is determined by dividing the loss by the number of days in the taxable year and multiplying by the number of days of the taxable year which fell in 1950. The amount of the carryover is determined in accordance with the first sentence of section 122 (b) (2) (B), which amount is the excess of the net operating loss over the sum of the net income for each of the intervening years computed with the limitations, additions, and exceptions in clauses (i) and (ii) of that sentence, except that the carryover to the fourth succeeding taxable year is limited to the amount of loss allocable to 1950, and is limited for the fifth succeeding taxable year to the portion of the loss allocable to 1950 minus the amount of the loss absorbed by the fourth year.

(*b*) *Successor railroad corporations*

Subsection (b) of section 205 amends section 1 (c) of Public Law 189, 80th Congress. Public Law 189 allows the successor corporation in the case of certain reorganized railroads to have the benefit of the carryovers of the net operating losses and unused excess-profits credits of the predecessor corporation. At the time of the enactment of Public Law 189 all taxpayers were allowed a 2-year carryover of net

operating losses under the provisions of section 122 of the Internal Revenue Code. Section 1 (c) of Public Law 189 in effect provided that if the period beginning on the first day of the taxable year of the predecessor corporation in which the acquisition occurred and ending on the last day of the taxable year of the successor corporation in which the acquisition occurred was not more than 12 months, then the net operating loss or unused excess-profits credit would be carried over for 3 years instead of 2 years as in the case of all other corporations. This provision was inserted in the statute because the last taxable year of the predecessor corporation and the first taxable year of the successor corporation in such a case would be short taxable years and it was desired in effect to give the successor corporation, as in the case of other corporations, the benefit of the carryovers for a full 2-year period. Section 330 (b) of the Revenue Act of 1951, however, added section 122 (b) (2) (C) to the code which provided that a net operating loss sustained in a taxable year beginning after December 31, 1947, and before January 1, 1950, could be carried forward for 3 taxable years by all taxpayers. Section 205 (b) of this bill accordingly amends section 1 (c) of Public Law 189 to provide a 4-year carryover of a net operating loss sustained in a taxable year beginning after December 31, 1947, and before January 1, 1950, in the case of such reorganized railroads. The amendment in effect will make the results under Public Law 189 conform to those obtained by all corporations under section 122 (b) (2) (C) of the code. The amendment is to be effective as if included in Public Law 189 at the time of its enactment.

SECTION 206. AMORTIZATION DEDUCTION FOR GRAIN STORAGE FACILITIES

Subsection (a) of this section adds new section 124B to the code, providing an amortization deduction for grain storage facilities. Under section 124B (a) the taxpayer may elect to amortize the adjusted basis (for determining gain) of a grain storage facility over a period of 60 months. The amortization deduction is allowable to (1) the original owner of a grain storage facility, i. e., the person who constructs, reconstructs, or erects such facility, or (2) any subsequent owner who acquires such a facility from another person who had made a valid election to take the amortization deduction and had not discontinued such deduction under section 124B (c). The deduction is allowable to a subsequent owner only if the original owner and each intervening owner elects to claim the amortization deduction, and neither the original owner nor any intervening owner had discontinued the amortization deduction under section 124B (c) prior to his disposition of the facility.

In the case of the original owner who constructs, reconstructs, or erects a grain-storage facility, the amortization period is a period of 60 months. He may elect to begin such period with respect to any grain storage facility either with the month following the month in which the facility was completed or with the beginning of the succeeding taxable year. In the case of a subsequent owner, the amortization period is the period, if any, remaining at the time of his acquisition in the 60-month period elected under section 124B (b) by the person who originally constructed, reconstructed, or erected the facility.

The amount of the amortization deduction under section 124B (a) is an amount with respect to each month of the amortization period within the taxable year equal to the adjusted basis of the facility at the end of such month divided by the number of months remaining in the period, including the month for which the deduction is to be computed. The adjusted basis of the facility at the end of any month is to be computed without regard to the amortization deduction for such month. The amortization deduction with respect to any month is in lieu of any deduction with respect to the facility for that month provided by section 23 (l) of the code, relating to the allowance for depreciation.

The original owner of a grain storage facility may elect to take the amortization deduction with respect to such facility and to begin the 60-month amortization period either with the month following the month in which the facility was completed or with the beginning of the succeeding taxable year. In either event the election is to be made by a statement in the taxpayer's return for the taxable year involved to the effect that the taxpayer elects to take the amortization deduction with respect to the particular facility and to begin the 60-month period at the time designated in the statement. In the case of a subsequent owner the election to take the amortization deduction must be made by a statement to that effect in the return for the taxable year in which the facility was acquired by him. However, under regulations to be prescribed by the Secretary, either an original owner or a subsequent owner may make the election under section 124B (b) prior to the filing of the return.

Any taxpayer, whether the original owner or a subsequent owner of the grain storage facility who has elected under section 124B (b) to claim the amortization deduction with respect to such facility, may, at any time after making the election, discontinue the amortization deduction as to the remainder of the amortization period. Such discontinuance shall become effective as of the beginning of any month, during which the taxpayer holds the facility, which is specified by the taxpayer in a notice in writing filed with the Secretary before the beginning of such month. From the beginning of the month specified for the discontinuance of the amortization deduction the deduction allowable under section 23 (l) of the code shall be allowed, and neither the taxpayer nor any subsequent owner of the grain storage facility shall be entitled to any further amortization deduction with respect to such facility.

Section 124B (d) defines the term "grain storage facility" to mean—

(1) any cornerib, grain bin, or grain elevator, or any similar structure suitable primarily for the storage of grain, which crib, bin, elevator, or structure is intended by the taxpayer, at the time of his election to claim the amortization deduction, to be used for the storage of grain produced by him or, if the election is made by a partnership, by the members thereof, and

(2) any public grain warehouse permanently equipped for receiving, elevating, conditioning, and loading out grain.

The intent referred to in clause (1) above must be present at the time the election is made, whether the election is being made by the original owner or by the subsequent owner.

The definition contained in section 124B (d) does not include any facility unless the construction, reconstruction, or erection of such facil-

ity was completed after December 31, 1952, and on or before December 31, 1956. However, if any structure described in clause (1) or (2) above is altered or remodeled so as to increase its capacity for the storage of grain, or if an existing structure not described in clause (1) or (2) above is converted through alteration or remodeling into a structure so described, such alteration or remodeling is to be treated as the "construction" of a grain storage facility, provided such alteration or remodeling was completed after December 31, 1952, and on or before December 31, 1956. The term "grain storage facility" as used in section 124B does not include a facility any part of which constitutes an "emergency facility" within the meaning of section 124A. Nor does "grain storage facility" include any property which is not of a character which is subject to the allowance for depreciation provided in section 23 (l). Thus, "grain storage facility" does not include the land on which a structure defined in clause (1) or (2) above is erected.

Section 124B (c) provides for the determination of the adjusted basis of a grain storage facility in the hands of a taxpayer for the purposes of section 124B (a). In determining the adjusted basis of any grain storage facility in the hands of the original owner where the construction, reconstruction, or erection of the facility was begun before January 1, 1953, there is to be included only so much of the amount of the adjusted basis computed without regard to subsection (e) as is properly attributable to construction, reconstruction, or erection after December 31, 1952. In the case of any alteration or remodeling of a structure which alteration or remodeling under section 124B (d) is treated as a construction of a grain storage facility, the adjusted basis of any such facility in the hands of the original owner is to be determined by including only that portion of the adjusted basis of the facility computed without regard to section 124B (e) as is properly attributable to such alteration or remodeling as was completed after December 31, 1952, and on or before December 31, 1956.

If any existing grain storage facility completed after December 31, 1952, is (prior to January 1, 1957) altered or remodeled so as to increase its capacity for the storage of grain, such remodeling or alteration shall be considered a new and separate grain storage facility, and the expenditures for such remodeling or alteration shall not be applied in adjustment of the basis of the preexisting facility, but a separate basis shall be computed for such remodeling or alteration. Such remodeling or alteration shall also constitute a new and separate "grain storage facility" for the purpose of the election under subsection (b) of section 124B to take the amortization deduction and to begin the 60-month period.

Under the provisions of section 124B (e) the adjusted basis of a grain storage facility for the purpose of computing the amortization deduction may differ from what would otherwise constitute the adjusted basis of such facility, in that the adjusted basis for the purpose of section 124B (a) may be only a portion of the adjusted basis (for determining gain) of the grain storage facility computed for other purposes. Thus, the adjusted basis for the purpose of computing the amortization deduction will be only a portion of the adjusted basis computed under section 113 (b) where only a portion of the basis (unadjusted) is attributable to construction, reconstruction, or erection after December 31, 1952. Also, in the case of any alteration or remodeling which is treated under section 124B (d) as the construction

of a grain storage facility, the adjusted basis of the facility for the purpose of the amortization deduction will include only that portion of the adjusted basis of the facility, otherwise determined without regard to section 124B (e), as is properly attributable to such alteration or remodeling as was completed after December 31, 1952. In these cases, therefore, it is necessary to determine the unadjusted basis for the grain storage facility from which the adjusted basis for amortization purposes is derived. The adjusted basis of the grain storage facility for amortization purposes is the unadjusted basis for amortization purposes less the adjustment properly applicable thereto. Such adjustments are those specified in section 113 (b) of the code, except that no adjustments are to be taken into account which increase the adjusted basis of the grain storage facility for the purposes of the amortization deduction.

In the case of a subsequent owner of any grain-storage facility the adjusted basis of such facility in his hands for the purpose of section 124B (a) shall be determined by including only the smaller of the following amounts: (1) The basis of such facility for the purposes of section 124B in the hands of the transferor, donor, or grantor, adjusted as if such facility in the hands of the taxpayer had a substituted basis within the meaning of section 113 (b) (2) (A), or (2) so much of the adjusted basis (for determining gain) of the facility in the hands of the taxpayer, computed without regard to section 124B as is properly attributable to construction, reconstruction, or erection after December 31, 1952.

Likewise, in the case of a subsequent owner of a grain-storage facility the adjusted basis of a facility for the purpose of computing the amortization deduction may differ from what would otherwise constitute the adjusted basis of such facility, in that the adjusted basis for the purpose of the amortization deduction may be determined by reference to the unadjusted basis for amortization purposes in the hands of the prior owner less the adjustments properly applicable to such prior owner.

The provisions of section 124B (e) may be illustrated by the following examples:

Example (1).—On February 28, 1953, A completes the construction of a grain storage facility as defined in section 124B (d) at a cost of $2,000 for the land and $6,000 for the construction. Only $3,000 of the total cost of the facility is properly attributable to construction after December 31, 1952. A elects to claim the amortization deduction and to begin the 60-month period on March 1, 1953. Under section 124B (c) the adjusted basis of the facility for the purpose of section 124B (a) as of that date is only $3,000, the amount attributable to construction after December 31, 1952. In determining the adjusted basis of the facility as of any subsequent date for the purpose of computing the amortization deduction, the amortization deductions allowable in respect of the period prior to such date must, of course, be taken into account. See section 113 (b) of the code. Thus, the adjusted basis of the facility for the purpose of computing the amount of the amortization deduction allowable for the month of January, 1954, is $2,500 ($3,000 minus $500, the amortization deductions allowable prior to January 1, 1954).

Example (2).—A began on January 1, 1953, and completed on June 30, 1953, the construction of a grain storage facility as defined in section 124B (d) at a cost of $5,000 for the land and $30,000 for the

construction. A elects to claim the amortization deduction and to begin the 60-month period on July 1, 1953. On May 1, 1954, A sells the grain storage facility to B for a price of $34,000 of which $6,000 is allocable to the land. B elects to claim the amortization deduction on the basis of the 50 months remaining in the amortization period. B, in determining the adjusted basis of the facility in his hands, must start with the unadjusted basis of the facility in the hands of A ($30,000) and adjust such basis under section 113 (b) (1) (B) in respect of amortization claimed by A during his ownership of the facility ($5,000). Since this amount ($25,000) is smaller than the adjusted basis (for determining gain) of the facility in B's hands as of May 1, 1954, ($28,000, that is $34,000 less $6,000 allocable to land), the adjusted basis of the facility for the purpose of section 124B (a) in B's hands as of May 1, 1954, is $25,000. A, therefore, may include only $25,000 in determining the adjusted basis of the facility in his hands as of May 1, 1954, the date of the purchase. The amortization deductions claimed by B must, of course, be applied in reduction of such adjusted basis in determining the adjusted basis of the facility as of any subsequent date for the purpose of his amortization deduction under section 124B (a). The amount by which the purchase price paid by B and allocable to depreciable property ($28,000) exceeds the adjusted basis determined under section 124B (e) for such property ($25,000)—or $3,000—is treated as the adjusted basis (as of May 1, 1954) for the purpose of the depreciation deduction allowable under section 23 (l).

As indicated in example (2) above, if the adjusted basis of any grain-storage facility computed without regard to section 124B (e) exceeds the adjusted basis of such facility computed under section 124B (e), the deduction provided by section 23 (l) shall, despite the provisions of section 124B (a) (3), be allowed with respect to the grain-storage facility as if the adjusted basis for the purpose of the section 23 (l) deduction were an amount equal to the amount of such excess.

In the case of property held by one person for life with remainder to another person, section 124B (g) provides that the amortization deduction shall be computed as if the life tenant were the absolute owner of the property and provides that such deduction shall be allowed to the life tenant.

Subsection (b) of this section makes certain technical amendments. Paragraph (1) amends section 23 (t) of the code to include the amortization deduction provided in section 124B. Paragraph (2) amends section 172 of the code to strike out the phrase "of emergency facilities," and thus conforms this section to the amendment made in section 23 (t). Paragraph (3) amends section 190 of the code to provide the same treatment in the case of grain-storage facilities owned by a partnership as in the case of emergency facilities of the partnership.

Under subsection (c) the amendments made by subsection (a) and (b) of this section shall apply only with respect to taxable years ending after the date of the enactment of the bill.

SECTION 207. EXCLUSION OF CERTAIN TRANSFERS TAKING EFFECT AT DEATH

Section 811 (c) (1) (B) of the Internal Revenue Code provides for the inclusion in the decedent's gross estate for estate-tax purposes of

certain transfers in which the decedent retained the income interests for life. Under section 7 (b) of Public Law 378, 81st Congress, as amended by section 608 of the Revenue Act of 1951, transfers of this type made prior to March 4, 1931, or in some cases prior to June 7, 1932, are not includible under section 811 (c) (1) (B) if the decedent died prior to January 1, 1951. Subsection (a) would amend section 811 (c) (1) of the code to exempt from section 811 (c) (1) (B) transfers made prior to the dates indicated where the decedent died at any time after February 10, 1939.

In the case of *Commissioner* v. *Church* (335 U. S. 632) the Supreme Court held that a transfer in which the decedent retained the income interests until death is includible in the decedent's gross estate as a transfer intended to take effect in possession or enjoyment at or after death. However, section 811 (c) (2) of the code as added by section 7 of Public Law 378 (81st Cong.) provides that transfers made prior to October 8, 1949, are not subject to tax under section 811 (c) (1) (C), applicable to transfers intended to take effect in possession or enjoyment at or after death (even though the decedent has reserved a life estate) unless the decedent has retained a reversionary interest in the transferred property arising by the express terms of the instrument of transfer and exceeding in value 5 percent of the value of the transferred property. Since section 811 (c) (2) is applicable only to estates of decedents dying after February 10, 1939, reserved income transfers made before March 4, 1931, may still be includible under section 811 (c) in the estates of decedents dying on or before February 10, 1939, even though the value of the decedent's reversionary interest is less than 5 percent. Subsection (b) of this section of the bill would apply the limitations of section 811 (c) (2) to the estate of a decedent dying before February 11, 1939.

Subsection (b) also provides a rule for cases in which the refund or credit of any overpayment resulting from the application of subsection (b) of this section is barred. The rule provides that if refund or credit resulting from the application of subsection (b) is prevented by the operation of the statute of limitations or by any other law or rule of law and the determination of estate-tax liability of the estate of any decedent dying before February 11, 1939, was pending on January 17, 1949, in the Tax Court or any court of competent jurisdiction, or the decision of any such court did not become final until on or after that date, then refund or credit may nevertheless be allowed if claim therefor is filed within 1 year from the date of enactment of this act. A refund is considered as resulting from the application of this subsection if its application removes an offsetting adjustment otherwise preventing a refund or credit.

SECTION 208. FAILURE TO RELINQUISH A POWER IN CERTAIN DISABILITY CASES

Under section 811 (d) of the Internal Revenue Code there is required to be included in the gross estate for estate-tax purposes certain property transferred in trust by the decedent during his lifetime where the decedent reserved the right to change the trust beneficiaries, but had no power to revest the trust property in himself. Section 208 of the bill would exempt from this particular provision certain trusts of this type where the decedent died after December 31, 1950, and was under a mental disability for a continuous period beginning not less than 3 months prior to December 31, 1947, and ending with his death.

In cases covered by the amendment made by this section, the decedent, if not under a mental disability, could have taken advantage of section 1000 (e) of the Internal Revenue Code to release, free of gift tax, the power to change the trust beneficiaries. As a result of such a release the trust property would ordinarily not have been includible in his gross estate under the provisions of section 811 (d) of the code. This section places the grantor of such a trust in the same position for estate-tax purposes as he would have been if he had been mentally able to release the described power, and had done so. This section would apply even though a guardian could have released the power for the decedent. The term "mental disability" as used in this amendment means mentally incompetent to make the release, whether or not there was a court adjudication of such incompetence.

SECTION 209. REVERSIONARY INTERESTS IN CASE OF LIFE INSURANCE

This section applies the rules contained in section 404 (c) of the Revenue Act of 1942, as amended by section 503 (a) of the Revenue Act of 1950, relating to reversionary interests in the case of life insurance, to estates of decedents dying after January 10, 1941, and before October 22, 1942.

Section 404 of the Revenue Act of 1942 generally revised the provisions governing the estate tax treatment of life insurance payable to beneficiaries other than the executor. Under the revised treatment one basis for subjecting such life insurance to estate tax is payment of premiums by the decedent. For this purpose section 404 (c) provided that the portion of the proceeds of life-insurance policies attributable to premiums paid by the decedent on or before January 10, 1941, shall be excluded if at no time after such date the decedent possessed an incident of ownership in the policies. For this purpose a reversionary interest was treated as an incident of ownership.

However, section 503 (a) of the Revenue Act of 1950 amended section 404 (c) of the Revenue Act of 1942 by providing that, for the purpose of determining whether the decedent possessed an incident of ownership after January 10, 1941, a reversionary interest was not an incident of ownership unless at some time after that date it exceeded in value 5 percent of the value of the policy and the reversionary interest arose by the express terms of the policy or other instrument and not by operation of law. The amendment made by section 503 (a) of the Revenue Act of 1950 was effective, however, only as to estates of decedents dying after October 21, 1942. This section applies the rules contained in section 404 (c) of the Revenue Act of 1942, as amended by section 503 (a) of the Revenue Act of 1950, to estates of decedents dying after January 10, 1941, and before October 22, 1942.

Subsection (b) provides that no interest shall be paid in respect of any overpayment resulting from the application of subsection (a) as to any payment made prior to the date of the enactment of this act.

SECTION 210. MARITAL DEDUCTION IN CERTAIN CASES WHERE DECEDENT DIED BEFORE APRIL 3, 1948

Subsection (a) of this section provides for the allowance of a marital deduction under section 812 (e) (1) (A) of the Internal Revenue Code in a case where an interest in property passes by will from a decedent, if the surviving spouse is entitled for life to all the income from such

property, payable annually or at more frequent intervals, with power in the surviving spouse to use and consume such portion of the property as the surviving spouse may need or desire for her (or his) comfortable support and maintenance, provided that there is no power in any person other than the surviving spouse to appoint any part of such property. This subsection would also apply in a case where the surviving spouse had greater powers than those described in subsection (a) if such greater powers include the specified powers. Under existing law, a marital deduction would not be allowable in a case of this type because of the operation of the terminable interest rule contained in section 812 (e) (1) (B) of the code. It is further provided that nothing in this subsection shall be construed to permit a double deduction for any property.

Under subsection (b), subsection (a) is to apply only if the surviving spouse so elects and in such case the property subject to the power is treated, for both gift and estate tax purposes, as property over which such spouse has a general power of appointment created on the date of the decedent's death and exercisable by deed or will. It is further provided that if the surviving spouse makes the election, the limitation provisions on the assessment and collection of any amount of gift or estate tax resulting from such election shall be extended to include 1 year from the date such election is filed.

Subsection (c) provides that this section shall apply only to estates of decedents dying after December 31, 1947, and on or before the date of the enactment of the Revenue Act of 1948.

SECTION 211. MITIGATION OF EFFECT OF STATUTE OF LIMITATIONS

Section 211 of the bill adds new paragraphs (6) and (7) to section 3801 (b) of the code, relating to circumstances of adjustment, and amends the second sentence of section 3801 (b). Paragraph (6) permits an adjustment, when a deduction or credit is disallowed, of tax liability within the additional period of time provided by section 3801 (c) in cases where (1) a related taxpayer was entitled to the deduction or credit or (2) the taxpayer was entitled to the deduction or credit for a different taxable year, if, at the time the deduction or credit was incorrectly claimed, credit or refund for the correct year or to the related taxpayer was not barred. Paragraph (7) provides similar rules where the Secretary included an income item in the incorrect taxable year or included an income item in the income of the wrong taxpayer of a related taxpayer group. The amendment to the second sentence of section 3801 (b) excepts cases described in paragraphs (6) and (7) from the requirement that the adjustment be made only in cases where the other party has maintained an inconsistent position, since cases described in paragraphs (6) and (7) are not attributable to the maintenance of an inconsistent position by the other party to the dispute. The new paragraphs (6) and (7) apply only where the determination became final on or after July 1, 1952.

Subsection (c) of section 211 provides that in any case in which the determination became final before the enactment of this bill, the 1-year period in section 3801 (c) for the making of the adjustment is extended to include the period of 1 year from the date of enactment of the bill.

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